(the general manager and treasurer) was made of him as an individual, and not in his business capacity, while in *Riding* v. *Smith* the slander of the wife was made "in relation to the business" of her husband, and reversed the decision. Such a distinction seems of little importance on principle. If the defendant, intending to injure the corporation, slandered Maher, and the intended injury resulted as a natural consequence of his words, it is immaterial whether he slandered Maher as an individual, or as the manager of the corporation. The test of the action is not whether there is an implied slander, but whether the wrongful misstatement can in a legal sense be said to cause the injuries sustained. This is the test applied in *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524, where a boiler-maker sued for general loss of trade due to a false publication that he had given up his business. The court held that although the words were not libellous or defamatory, an action on the case was maintainable, as the injuries were the natural and probable consequence of the false statements. If courts will allow recovery in such a case, it is difficult to see on principle why under some circumstances an action should not lie for injuries of which the slander of a *third* person is the proximate and predominating cause. See 14 HARVARD LAW REVIEW, 184.

DEATH BY WRONGFUL ACT. — While the language of the statutes doing away with the civil immunity of a tortfeasor whose wrongful act results in death varies more or less in different jurisdictions, the courts are practically agreed that any act by the party injured which, had he lived, would be a bar to his suit for the injury, will also be a bar to a suit under the statute by his personal representative. But even under similarly worded statutes widely different reasoning has been employed in reaching this admittedly desirable result. By many it has been thought to depend on the question whether a new right of action was given by the statutes to the personal representative of the deceased, or whether they merely provided for a survival of the action that at common law died with the party injured. In England, after some doubt, Lord Campbell's act was held not to give a new cause of action, and hence a release by the decedent, even before any injury, was a bar to a suit under the statute. *Haigh* v. *Royal Mail S. P. Co.*, 5 Asp. M. C. 189. In this country the courts, though in the main repudiating the doctrine that no new right of action is given, generally reach the same result as the English court by a more or less strained construction of the statutes — seizing hold of phrases such as the common provision that an action lies "if the neglect, etc., is such as would have entitled the party injured to maintain an action" as indicating the intention of the legislature to be that if for any cause the party injured could not have sued, there is a good defence to an action by the personal representatives. *Littlewood* v. *Mayor, etc. of New York*, 89 N. Y. 24. But even under a statute with no such ambiguous provisions, the same result was reached in a recent case by a court which at the same time admitted that the statute gave a new cause of action. *Southern Bell Telephone Co.* v. *Cassin*, 36 S. E. Rep. 881 (Ga.). The plaintiff's husband released the defendant from liability for personal injuries due to the defendant's negligence. Five years later, upon these injuries resulting in death, the plaintiff brought suit under the statute. The court held the release a bar on the ground that the wife was privy to

the husband and therefore estopped by his release, and, further, that "payment, like pardon, relates back to the original act and makes it as though it never had been." This idea of estoppel against the wife seems entirely unsound. Indeed, the court's premise that the statute gives the personal representatives a new right of action is fatal to this estoppel theory. On the other hand, the court seems correct in holding that a new right of action is given by the statute. For not only is the amount recovered not assets in the hands of the administrator, but the measure of damages generally adopted — the actual loss to the deceased's family — is strong to show that the statutes do not merely provide for a survival of the deceased's right of action. Were this the case, damages for the deceased's physical suffering should be allowed, as the fact that the wrongful act resulted in death is surely no ground for a decreased liability on the tortfeasor. The terms of the Georgia statute are singularly broad, and if the decision can be supported at all, it must be upon the ground that the statute is one of a series intended to defeat the operation of the maxim, *Actio personalis moritur cum persona*, and therefore may be so construed that while fully effecting this purpose, it will not contravene the general policy of the law, — to encourage the compromising of actions. But it would seem to be rather a cavalier treatment of a statute which without any qualification gives the personal representatives a new right of action to read into it a proviso that what would be a defence against the party injured will also defeat this right.

THE DISSEISIN REQUISITE TO SUPPORT EJECTMENT. — In a recent case the defendant, a street railway company, without any legal authority, put its tracks on a highway over the plaintiff's land. In a former suit, two years after the road was in operation, the plaintiff sought a mandatory injunction to have the tracks removed. On equitable grounds the injunction was refused, though the defendant's trespass was admitted. The plaintiff now plants himself firmly on his legal right, and brings an action of ejectment. The court refuses to allow the action on two grounds: First, that as the plaintiff was never entitled to the possession of the soil in the highway, he cannot be said to have been excluded or disseised; and, second, that the defendant's act was merely the illegal or excessive user of an admitted easement of public travel, which would only give a right in trespass for damages. *Becker* v. *Lebanon, etc. St. Ry. Co.*, 46 Atl. Rep. 1096 (Pa.). The first objection is contrary to the usual doctrine in regard to public rights of way. The general rule is that the owner of the fee of a highway is entitled to protect his rights by every species of action and remedy which would be open to him if his land were disincumbered of the way. Angel on Highways, § 519; *Thomas* v. *Hunt*, 134 Mo. 392. The plaintiff has a right to have his land restored subject to the public easement; the mere fact that absolute possession cannot be restored is immaterial. The second ground on which the court relies raises the question as to whether or not a street railway company in laying its tracks on a public way can be said to disseise the owner of the fee in such a sense as to allow the action of ejectment. It must be admitted that a railroad assumes a right in the nature of a right of way. There is no claim of freehold, and the passing of trains is only occasional, like the passing of teams over a highway. It differs, however, from the ordinary right of way in that a permanent structure is put upon the servient